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No. 90-401

Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS,

Respondent

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. May a state deprive an attorney of their 20 year reputation, right to work, and career on a claim that Comity or Full Faith and Credit may be applied to the ex parte totem pole hearsay and interlocutory claims of a non-lawyer volunteer of a California State Bar Association in another state asserting he is involuntarily enrolling the attorney as an inactive member of their bar association and this is a "suspension " as the non-lawyer volunteer is a private State Bar Court ?

Table of Authorities

Consumers Lobby v. Public Utilities Commission 25 Cal. 3d. 891 — 17

Conway v. State Bar, 47 Cal. 3d. 1107 (1989) — 18

In re: matter of Betsey Warren Lebbos 407 Mass. 1010 (1990) — 3,6,9

In re: Ruffalo, 88 S. Ct. 1222 — 15

Morgan v. United States v. United States (1936) 298 U.S.468, 56 S. Ct. 906, 912, 80 L Ed. 1288,1295; 304 U.S.1, 58 S. Ct. 773, 82 L.Ed. 1129 — 4

Ca. Business and Professions Code :

Section 6077 — 5

Section 6078 — 5

California Evidence Code :

Section 452 — 7

Massachusetts Supreme Judicial Court Rules:

SJC Rule 4:01 (12 A) — 14,15,16

SJC Rule 4:01 (16)(1) — 15

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I.

Introduction

Due to the departure of Bar Counsel in Massachusetts, the brief submitted by his assistant without reference to the record has 34 factual errors. Only the major ones

are addressed herein.

Although they are not determinative of the imperative need to hear the Petition to protect 30 million United States citizens and their 125,000 lawyers in California and the need to void the Judgment as violating the Full Faith and Credit clause, Petitioner submits the following corrections from the undisputed record.

II.

The charges claimed were never filed

Only one of the charges recited by respondent as being recognized by Massachusetts were in fact ever filed or heard. BIO:14. (1)

(1) Petitioner submitted the actual charges filed. Reply Brief, SJC-5279,p.6-19, App. Ex.F. Respondent's list is inaccurate. His claimed serious charges were never filed or discussed.BIO:14.The only charge he accurately lists is commingling. It fails as there was no

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The Judgment recognized the record from the volunteer in the California State Bar Association was " sparce. " It had no charges. The record is so sparce that the judgment was unable to recite any charges. In re: matter of Lebbos, (1990) 407 Mass. 1010.

The judgment acknowledges that the non-lawyer volunteer of the

(1) (continued from prior page)

client. Refer ft. 1 on p. 16 of Amicus Curiae brief of Attorney Ronald Z. Berki of San Jose. There was a charge of filing a complaint that named as a plaintiff Mrs. McCutcheon without her knowledge or consent, but there was no charge she was a former client. She was a client. Her affidavit states, " I did not file a charge against Attorney Lebbos. The State bar filed a charge without my knowledge, permission, and consent alleging Attorney Lebbos filed suit for me without my consent. How they could file such a charge without ever speaking to me is unbelievable. Ms. Lebbos had my implied consent. I testified to that. She was my attorney.....I was shocked when the Examiner told me that I didn't

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California State Bar Association had no evidence or transcripts in support of any claims of professional misconduct. He just relied on what the prosecutor claimed happened in the prior advisory proceeding. Appendix A to Petition-" The hearing panel referee, relying on the findings in the disbarment proceeding, ordered that the attorney involuntarily be placed on inactive status. " There were, of course, no findings as his fellow

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(1) (continued from prior page)

need to worry as the Referee would go along with " our side." It was my impression that, no matter what I said, it made no difference, as it was all set up. It is obvious that something is wrong with the Referee as he either can not hear or can not retain simple material. Or, in fact, it was a set up." Reply Brief, In re: Lebbos, SJC-5279, App., Ex.E. Her actual testimony of her consent is at page 19 of the Reply Brief, Ibid, SJC-5279.

volunteer could make no findings, only recommended findings for the state supreme court. Ca. Business and Professions Code sections 6077, 6078. Volunteers of trade groups do not make findings. Assistant bar counsel now inserts a factual contention never raised, which is disputed by the judgment. He asasserts the volunteer had 25 volumes of transcripts, 110 exhibits, and the " findings " of his fellow volunteer. BIO: 14. Since there were no transcripts, there were none to read. This raises a factual discrepancy between the judgment and the respondent's claims. This would affect the applicability of Morgan v. United States v. United States (1936) 298 U.S.468, 56 S. Ct. 906, 912, 80

L.Ed.1288,1295; 304 U.S.1, 58 S.Ct. 773, 82 L.Ed. 1129, cited at page 51 of the Petition. Compare In re: Lebbos, supra, p. 1011 and BIO: 14.

Since the first hearings did not conclude until January 9, 1989, and the second volunteer acted four weeks later without notice on February 13,1989, there were no transcripts. They were not prepared for another five months. Petitioner's Supp.Appendix, Ex. C-5, C-77 and Refer Page 9 of Amicus brief of Attorney Reginald Shinn.

A reading of what the non-lawyer signed resolves the dispute. The judgment is accurate while the claims of the respondent are not. The judgment states the referee " relied on the findings in the disbarment proceeding." In re Leb-Los, Supra, 1011. The papers

the volunteer signed admitted he read nothing and had no evidence. He solely asserts he is " judicially noticing " his fellow volunteer's alleged findings and conclusions only. Pet. Supp. App., Ex. C-5, Judicial Notice.

The California Evidence Code section cited permits Judicial Notice only by real courts of law of other real courts of law and only of final and binding adjudications. Evidence Code sections 451-452. It does not permit Judicial Notice of interlocutory or state bar claims or of fellow volunteers or lay people or hearsay. It also requires that notice must be given to a party of any request for Judicial Notice. No notice was given of

the proceeding. Petition, p. 47-49.

Thus the issue of recognition of an alleged State Bar Court is serious. With no final disposition, one volunteer may claim to notice interlocutory claims of his fellow volunteer as communicated to him ex parte by a prosecutor and take any lawyer's career nation-wide on hearsay, as occurred herein.

III.

There was no proof of any misconduct

When the Petitioner filed her Reply brief to the lower court setting forth in detail how the actual transcripts prepared months later refuted all charges, respondent did not attempt to assert there was any evidence to support any charge. Petitioner's Reply Brief, In re Lebbos, SJC 5279, pgs. 5-20. Respon-

dent's position is innocence is irrelevant. " We shall not recite the findings on the various charges of disciplinary misconduct, nor shall we become involved in the attorney's challenges to those findings." In re: Lebbos, supra, p. 1011. Since there are no findings, the respondent erred as a non-lawyer volunteer of a trade group copying what a prosecutor claims happened in a prior advisory, nonfinal proceeding does not comply with basic due process of law under Morgan, supra nor qualify as " findings."

Assistant bar counsel now asserts that they were involved in those challenges, but that " there was no infirmity of proof," BIO: 14. With the respondent unable to recite what were the charges, and no reference in the record to any

actual proof of any, but the reverse; and the judgment's recitation that the court will not become involved in any proofs, this assertion fails for lack of corroboration in the record.

Petitioner refers this Court to the actual record below with sixteen public observers' affidavits that there was no evidence presented and the first volunteer the second volunteer claims to be copying could not see, hear, or remember who were the witnesses or the attorneys or the charges and to the actual transcripts showing innocence recited at pages 5-20 of the Reply brief. The first volunteer was mentally and physically incapacitated. In re: Lebbos, Supreme Judicial Court, Suffolk County, No. 89-42 BD011594, Exhibit B. A few

of the affidavits are as follows :

" Out of curiosity I attended one of the ... hearings and was appalled by what I saw and heard. Judge Lazarus was completely oblivious to his surroundings.. (it was) truly pathetic.. and I, a member of this society, was outraged that the State bar chose to appoint an 83 year old Judge, as the referee, and subject this human being to public humiliation by his inability to keep up with the issues at hand....I kept telling myself this could not be taking place in the United States of America... take note of the many times he had to be brought back to reality and the waste of time trying to explain the issues to him that he did not fully understand.."

D. Mathieson Affidavit.

" The referee was very friendly, congenial, legally incompetent and exhibited gross senility.. He had difficulty- in fact- a total lack of comprehension of explained law...In two seconds, he could not remember any of what he had read. Material was in and out of his mind so fact, it was like a revolving door. There was, in fact, no law. There was no evidence against Attorney Lebbos. "

H. Jeter Affidavit.

" It was the bigest farce I ever

saw. The referee was senile, and the examiner dishonest. Only Ms. Lebbos was honest and competent ... this was a political trial ... it was as crooked as any proceeding could ever be... I never saw such a group of sleaze lawyers as those who testified against Attorney Lebbos. They were her opposing counsel and they admitted to fraudulent behavior.. they had the wrong person on trial...Lebbos was innocent, and she proved it, but the Referee was just a " Plant."

J. Pullen Affidavit.

" Since (the referee) on several occasions complained to Ms. Lebbos that he couldn't hear her, while on the other hand Mr. Fishkin was constantly complaining that she was shouting so loudly it was hurting his ears, and those of his witnesses, it was obvious that (the referee) was missing major sections of testimony.... I would venture a guess he could not recognize a picture of Ms. Lebbos this soon after the hearing.. I believe (he is) senile, and this sham of a hearing should be dismissed ..."

G. Mathieson Affidavit.

" The old man they chose as a judge was not alert. He could not follow the testimony of the witnesses...he would lose his place, forget who was the witness, forget the subject, and five minutes

later, forget the same thing that occurred five minutes before... He would say the same thing over and over again and when it didn't apply... he did not follow the meaning of the words.. I state unequivocally I heard no evidence in support of the charges... Had the referee not been obviously senile or political, or both, it was clear that the State Bar had no case. I am shocked at how bad the State Bar abuses the law."

C. Waites Affidavit.

A perusal of those public observer affidavits, including newspaper reporters, leads no doubt that the proceeding the second volunteer and the respondent rely on was not a proceeding with any semblance of due process, competency or evidence. Reply Brief, App., Ex.E, In re: Lebbos, SJC- 5279; see also ft. 1, pgs. 16- 19 of Amicus brief of Attorneys Ronald Z. Berki and pgs. 29-40 of Amicus brief of Attorney John B. Gunn, both of San Jose.

As the nine Amicus briefs submitted from California attorneys from Sacramento to Los Angeles indicate, the State of California is in a serious Constitutional crisis. People who can not read or write are making orders ex parte taking 20-30 year careers of California lawyers and having them arrested and imprisoned.

IV.

The proceedings were under the Reciprocal Discipline Rule

Because of the defect in interpreting a Reciprocal Discipline rule as including ex parte hearsay claims of a non-judicial and interlocutory nature of a non-lawyer volunteer of a bar association, respondent now asserts that rule was not used by the single justice, but another rule. BIO: 7. He as-

serts that the single justice judgment was under SJC Rule 4:01 (12 A), and not the Reciprocal Discipline Rule, SJC Rule 4:01 (16) (1). BIO: 7.

However, both the single justice and full court judgment and the Notice served on Petitioner solely rely on the Reciprocal Discipline rule. Appendices A and B-1 to Petition. Any attempt to change the proceedings would appear to violate the mandate of In re: Ruffalo, 88 S.Ct.1222. Reply Brief, p.1, ft.1, In re: Lebbos, supra, SJC-5279.

This same factual error led respondent to assert that the Judgment is not final. BIO: 10. He cites rule 12 A as permitting termination of a suspension. That rule does not apply to reciprocal discipline cases under 16A as 16 A presupposes a

final judgment has been entered elsewhere. 12 A is not at issue. It was never pled. It does not apply as it addresses solely temporary suspensions entered to prevent harm to clients, and not 16 (1) Reciprocal Discipline suspensions.

V.

The issues have not been presented in any other setting

Respondent incorrectly asserts the issues they refused to hear have been fully considered in settings more conducive to effective review than this Petition. BIO: 11.

In none of the denied Petitions was the issue raised of a state violating the Full Faith and Credit clause by refusing to recognize a State Constitution and Comity and their mandatory nature and limitations. Respondent appears to agree

they violated the Full Faith and Credit Clause, BIO:9, but asserts Comity allows them to recognize an unconstitutional court and state statutes. BIO:9.

Second, the denial of a Petition is not considered an opinion under California Supreme Court Rule 29. Refer Reply Brief, In re: Lebbos, SJC 5279, p.4. Denial without an opinion is not res judicata or stare decisis on issues of law. Consumers Lobby v. Public Utilities Commission 25 Cal. 3d. 891, " when the issue is a question of law rather than of fact, the prior determination is not conclusive.."

Third, this Court's denial has always been considered a declination to decide, rather than an affirmative decision on the law.

Thus, the claim a denial of a

Petition without opinion may be treated as if it were a published decision on the law necessarily also violates the Full Faith and Credit clause as Massachusetts also declined to recognize that such a denial is not an opinion, and that tendered constitutional issues upon which a judgment depends must be decided when there is no controlling opinion and decision in the sister state. Refer Reply Brief, In re: Lebbos, SJC-5679,p.4.

The contention that Conway v. State Bar, 47 Cal. 3d. 1107 (1989) reviewed the constitutionality of the State Bar Court is error. It does not mention the issue. BIO:12.

VI.

Presence in a state is irrelevant

Respondent seems to assert that the Full Faith and Credit clause

may be violated as the attorney is not in Massachushusetts. BIO: 5.

His factual assertions of non-nexus are inaccurate. Petitioner was born, educated, both undergraduate and law school in the Boston area. She practiced law there from 1971 through 1975.

Her ancestor is William, the Earl of Warren, who signed the Magna Carta in 1215. Both sides of her family came over on the Mayflower and their names- Warren, Badger and Snow- are engraved on the Plymouth Rock.

CONCLUSION

The defect here is the taking occurs first. Respondent admits they violated their own rule requiring a certified copy of an order of suspension, but excuse their failure by claiming Conway

will be recognized, although it does not address the constitutional claims, and to the extent it does, it denies due process. The taking precedes due process. It is backwards. Respondent asserts that two volunteers of an out-of-state bar association, one impaired and the other, a non-lawyer, may be recognized and take a lawyer's career, when the Full Faith and Credit Clause does not permit recognition of interlocutory or private acts. Respondent " is neither equipped nor motivated to provide an adequate advocate for the California system." BIO:12. If they can not defend it, may they recognize it ?

RESPECTFULLY SUBMITTED,

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VERIFICATION

I have read and prepared the foregoing Reply to Brief in Opposition and state its contents are true and correct, based on my own personal knowledge, information, and belief, and this Declaration is executed this 30th day of November, 1990 at San Jose, Ca.

RESPECTFULLY SUBMITTED,

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